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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 GUSTAVO TORRES DELA RIVA,  
11 Plaintiff,  
12 v.  
13 KIM HOLLAND, Warden,  
14 Defendant.

CASE NO. 15cv0683 WQH (JMA)

**ORDER**

HAYES, Judge:

15 The matters before the Court are the Motion to Dismiss the Petition for Writ of  
16 Habeas Corpus (ECF No. 12) filed by Defendant and the review of the Report and  
17 Recommendation (ECF No. 16) issued by United States Magistrate Judge Jan M. Adler.

18 **I. Background**

19 On October 30, 2014, Petitioner Gustavo Torres Dela Riva, a state prisoner  
20 proceeding *pro se*, filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C §  
21 2254. (ECF No. 1). On May 5, 2015, Respondent filed the Motion to Dismiss the  
22 Petition for Writ of Habeas Corpus. (ECF No. 12). The docket reflects that no  
23 opposition was filed. On August 7, 2015, United State Magistrate Jan M. Adler issued  
24 the Report and Recommendation, recommending that the Motion to Dismiss be granted  
25 and the petition be dismissed with prejudice because Petitioner's claims are untimely  
26 and time-barred by the statute of limitations pursuant to 28 U.S.C. § 2244(d). (ECF No.  
27 16). The docket reflects that no objections have been filed to the Report and  
28 Recommendation.

1 **II. Discussion**

2 The duties of the district court in connection with a report and recommendation  
 3 of a magistrate judge are set forth in Federal Rule of Civil Procedure 72(b) and 28  
 4 U.S.C. § 636(b). The district judge must “make a de novo determination of those  
 5 portions of the report ... to which objection is made,” and “may accept, reject, or  
 6 modify, in whole or in part, the findings or recommendations made by the magistrate.”  
 7 28 U.S.C. § 636(b). The district court need not review de novo those portions of a  
 8 Report and Recommendation to which neither party objects. *See Wang v. Masaitis*, 416  
 9 F.3d 992, 1000 n.13 (9th Cir. 2005); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121  
 10 (9th Cir. 2003) (en banc) (“Neither the Constitution nor the [Federal Magistrates Act]  
 11 requires a district judge to review, de novo, findings and recommendations that the  
 12 parties themselves accept as correct.”).

13 The Court has reviewed the Report and Recommendation, the record, and the  
 14 submissions of the parties. The Court finds that the Magistrate Judge correctly  
 15 recommended that Respondent’s motion to dismiss be granted and that the petition be  
 16 dismissed with prejudice. The Report and Recommendation is adopted in its entirety.

17 **III. Conclusion**

18 IT IS HEREBY ORDERED that the Report and Recommendation (ECF No. 16)  
 19 is ADOPTED in its entirety. Respondent’s Motion to Dismiss the Petition for Writ of  
 20 Habeas Corpus (ECF No. 12) is GRANTED. The Petition for Writ of Habeas Corpus  
 21 (ECF No. 1) is DISMISSED WITH PREJUDICE.

22 DATED: September 18, 2015

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 24 **WILLIAM Q. HAYES**  
 25 United States District Judge  
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